

San Diego Regional Water Quality Control Board

September 29, 2015

Certified Mail – Return Receipt Requested
Article Number: 7010 1060 0000 4953 0587

Mr. Rick Dudley
City Manager
City of Murrieta
One Town Square
24601 Jefferson Avenue
Murrieta, CA 92562

In reply refer to: CW-710610:CMean
(07C-114) or
CW730273:CMean
(09C-059)

SUBJECT: Notice of Violation No. R9-2015-0150 for Failure to Comply with Monitoring and Reporting Provisions of Water Quality Certification Nos. 07C-114 and 09C-059

Mr. Dudley:

Enclosed is Notice of Violation (NOV) No. R9-2015-0150, issued to the City of Murrieta (City) for violations of Clean Water Act (CWA) Section 401 Water Quality Certification Nos. 07C-114 (Clinton Keith Road at I-215 Interchange Project) and 09C-059 (Ivy Street Bridge Replacement Project), issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board).

The State of California largely relies on Section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to waters of the U.S./ State. Section 401 requires an applicant to obtain “water quality certification” from California that the project will comply with State water quality standards before certain federal licenses or permits may be issued. The permits subject to section 401 include permits for the discharge of dredged or fill materials (CWA section 404 permits) issued by the U.S. Army Corps of Engineers (Corps).

As described in the NOV, the City’s failure to comply with monitoring and reporting provisions of the subject water quality certifications subject you to further enforcement pursuant to the California Water Code (CWC). The San Diego Water Board reserves the right to take any enforcement action authorized by law.

In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

HENRY ABARBANEL, PH.D, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, California 92108-2700 | www.waterboards.ca.gov/sandiego

Written correspondence pertaining to this NOV should be sent electronically to sandiego@waterboards.ca.gov. In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." For questions pertaining to the subject matter, please contact Christopher Means at (619) 521-3968 or cmeans@waterboards.ca.gov.

Respectfully,



Chiara Clemente
Senior Environmental Scientist

Enclosure: NOV R9-2015-0150

Cc (by email w/ encl.):

Ms. Nicole Gergans, San Diego Water Board: Nicole.Gergans@waterboards.ca.gov
Mr. Eric Becker Eric.Becker@waterboards.ca.gov
Mr. Christopher Means, San Diego Water Board: cmeans@waterboards.ca.gov
Mr. Roger Owen, City of Murrieta: Rowen@murrieta.org
Mr. Jeff Hitch, City of Murrieta: JHitch@murrieta.org
U.S. EPA, OWOW, Region 9, R9-WTR8-Mailbox@epa.gov
SWRCB 401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

Place ID (Clinton)	710610
Violation ID	996553
Place ID (Ivy)	730273
Violation ID	996550
Party ID	493370
Reg Measure NOV ID	403000



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

September 29, 2015

NOTICE OF VIOLATION NO. R9-2015-0150

Mr. Rick Dudley
City Manager
City of Murrieta
One Town Square
24601 Jefferson Avenue
Murrieta, CA 9256297

**Violations of Clean Water Act Section 401
Water Quality Certification Nos.
07C-114 (Clinton Keith Road at I-215
Interchange Project) and
09C-059 (Ivy Street Bridge Replacement
Project)**

THIS IS TO NOTIFY YOU THAT:

The City of Murrieta (City) is in violation of Clean Water Act (CWA) Section 401 Water Quality Certification Nos. 07C-114 (Clinton Keith Road at I-215 Interchange Project) and 09C-059 (Ivy Street Bridge Replacement Project) (collectively, Certifications), issued by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) for failure to comply with the monitoring and reporting conditions contained within these Certifications as issued and amended.

Such violations subject you to possible further enforcement action by the San Diego Water Board including, but not limited to, assessment of administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and/or, referral to the District Attorney for criminal prosecution.

A. Background

Clinton Keith Road at I-215 Interchange Project

On January 8, 2009, The San Diego Water Board issued CWA Section 401 Water Quality Certification No. 07C-114 to the City for the Clinton Keith Road at I-215 Interchange Project. The project proposed to modify the existing interchange from a diamond configuration to a partial cloverleaf configuration by adding northbound and southbound loop on-ramps in the northwest and southeast quadrants. The existing two-lane overcrossing would be removed and replaced with a six-lane overcrossing. The remaining existing ramps would be reconstructed to accommodate the two new loop ramps.

HENRY ABARBANEL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108-2700 | (619) 516-1990 | www.waterboards.ca.gov/sandiego



On June 25, 2009, at the request of the City of Murrieta, the San Diego Water Board amended the certification to allow for proposed changes to the project's mitigation and final plan submittal requirements. Condition D.1 of Certification No. 07C-114, as amended, includes the following mitigation/reporting requirements for the revised impacts to 0.02 acre (450 linear feet) of Waters of the U.S.:

1. Onsite establishment of 400 linear feet (0.11 acre) consisting of an open conveyance channel planted with native vegetation (Condition D.1(a)).
2. Restoration of 1.11 acres of streambed through contribution to the Elsinore Murrieta Anza Resource Conservation District in-lieu fee program, (Condition D.1(c)) and
3. The submission of an updated Final Habitat Mitigation and Monitoring Plan within 30 days of amendment issuance. (Condition D.1(d)).

Condition H.6 of the certification contains a list summarizing the required reports and their due dates to be submitted to the San Diego Water Board during the duration of the project.

Ivy Street Bridge Replacement Project

On December 28, 2009 the San Diego Water Board issued CWA Section 401 Water Quality Certification No. 09C-059 to the City for the Ivy Street Bridge Replacement Project. The project proposed to replace an existing concrete and asphalt Arizona crossing through Murrieta Creek at Ivy Street with a spanned Bridge. The project consisted of removing the Arizona crossing (9,800 cubic yards), restoring that portion of the creek, and replacing the crossing with a cast in place 2-lane bridge. The new bridge required the placement of three piers within the creek and ten linear feet of rip-rap for bridge foundation protection.

On April 8, 2010, at the request of the City of Murrieta, the San Diego Water Board amended the certification to allow for proposed changes to the projects mitigation, monitoring and construction requirements associated with the project. Mitigation changes were requested to allow for increased on-site enhancement to replace a proposed payment to an in-lieu fee program. The amendment also removed the annual monitoring requirements for the original mitigation site due to the anticipated restoration of Murrieta Creek at the project location as part of the U.S. Army Corps of Engineers' Murrieta Creek Flood Control and Restoration Project.

Condition D.1 of Certification No. 09C-059, as amended, includes the following mitigation requirements for permanent impacts to 0.009 acre (20 linear feet) of vegetated Waters of the U.S., and temporary impacts to 2.42 acres of vegetated and unvegetated Waters of the U.S.:

1. On-site enhancement of no less than 0.3 acre of mulefat scrub, and the removal of non-native species throughout the project footprint as described in the Ivy Street Bridge Conceptual Enhancement and Mitigation Plan. (Condition D.1(b)).
2. Restoration of the creek channel to an open configuration following the removal of the Arizona crossing. (Condition D.1(c)).
3. Restoration of all temporary impacts to pre-project conditions. (Condition D.1(d)).

Condition H.6 of the certification contains a list summarizing the required reports (with the exception of mitigation annual monitoring reports) and their due dates to be submitted to the San Diego Water Board during the duration of the project.

B. Summary of Violations**1. Failure to Comply with CWA Section 401 Water Quality Certification Monitoring and Reporting Requirements.****a. Clinton Keith Road at I-215 Interchange Project (07C-114)**

A review of San Diego Water Board files indicates that the following documentation was not submitted by the City of Murrieta or its consultants as required by the conditions of amended Certification No. 07C-114:

- 1) Annual Progress Reports (Condition A.10)
- 2) Final Project Report (Condition H.3)
- 2) 5 day notice for Initiation and Completion of Mitigation (Condition D.3)
- 3) Draft and Final Preservation Mechanisms (Condition D.6)
- 4) Receipt of payment to EMARCD including total streambed purchased, location of restoration, date of initiation, and estimated date of completion (Condition D.7)
- 5) Mitigation As-Builts (Condition D.8)
- 6) Baseline Conditional Assessment and Mitigation Conditional Assessment (Condition D. 10.a)
- 7) Annual Mitigation Monitoring Reports (Condition D.14)
- 8) Photo Documentation (Condition F.1)
- 9) GIS Shapefiles (Condition G.1)

Observations: On July 6, 2015 San Diego Water Board staff Nicole Gergans contacted Roger Cunliffe-Owen with the City, and notified him of the delinquent reporting for Certification No. 07C-114 and requested an inspection of both the on-site and off-site mitigation areas. Subsequent San Diego Water Board follow-up emails on August 12, 2015 and August 26, 2015 determined that the City and its consultant (AECOM) were attempting to obtain the requested information. To date, there has been no further communication from the City.

b. Ivy Street Bridge Replacement Project (09C-059)

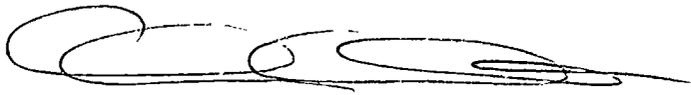
A review of San Diego Water Board files indicates that the following documentation was not submitted by the City of Murrieta or its consultants as required by the conditions of amended Certification No. 09C-059:

- 1) Annual Progress Reports (Condition A.10)
- 2) Commencement of Fill Notice (Condition B.3)
- 3) Mitigation Commencement Notification (Condition D.4)
- 4) Final Project Annual Report (Condition A.10)
 - a. Photo documentation of post construction BMPs with GPS points (Condition F.1)
 - b. Photo documentation of project site, including all areas of impact, and areas of mitigation prior to and after construction with GPS points (Condition E.1)
 - c. GIS shape files of impact and mitigation areas (Condition G.1)

Observations: On May 6, 2015 San Diego Water Board staff Nicole Gergans contacted Jeff Hitch with the City, and notified him of the delinquent reporting for Certification No. 09C-059. Through subsequent emails Mr. Hitch provided some of the outstanding documents. Water Board staff last contacted Mr. Hitch via email on June 17, 2015 with the above list of documents that were still outstanding. To date there has been no further communication from the City.

C. Summary

The City remains in violation of the conditions of the Certifications and should supply the San Diego Water Board with the required documentation immediately. Failure to address these violations may subject the City to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of up to \$10,000 per day of violation (Water Code section 13385).



Chiara Clemente
Senior Environmental Scientist
San Diego Water Board

CMC: cjm

Place ID (Clinton)	710610
Violation ID	996553
Place ID (Ivy)	730273
Violation ID	996550
Party ID	493370
Reg Measure NOV ID	403000